UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

JOHN RUSSELL PENN,

Plaintiff,

v.

CONSTANCE C. REESE, DAVID DUNCAN, TRONG TRAN, MICHAEL J. STALKA, GUY HOWELL, JORGE CASTENADA, DAVID GOODE, JOHN AND JANE DOE, JOHN DOE, JOHN DOE, and JOHN DOE,

Defendants.

Civil No. 01-708 (MJD/ESS)

ORDER

Plaintiff, a prisoner at the Federal Medical Facility, Rochester, Minnesota, ("FMC-Rochester"), has filed an amended complaint seeking relief for alleged violations of his federal constitutional rights. [Docket No. 16].[1] The matter is now before the Court on Plaintiff's "Application to Proceed Without Prepayment of Fees," [Docket No. 5], by which Plaintiff seeks leave to proceed in this matter in forma pauperis, ("IFP").

Plaintiff's IFP application will be GRANTED, which means that he will be excused from pre-paying the filing fee for this action. However, Plaintiff will be required to pay the unpaid balance of the filing fee in installments pursuant to 28 U.S.C. § 1915(b)(2). See Ashley v. Dilworth, 147 F.3d 715, 716 (8th Cir. 1998) ("the purpose of the [Prison Litigation Reform Act] was to require all prisoner-litigants to pay filing fees in full, with the only issue being whether

[1] In a Report and Recommendation to Judge Michael Davis issued June 12, 2001, this Court recommended that this matter be summarily dismissed because Plaintiff had failed to exhaust his administrative remedies. See Docket No. 14. Plaintiff subsequently filed his First Amended Complaint which alleged that Plaintiff had now exhausted his administrative remedies. Based on these allegations Judge Davis declined to adopt this Court's Recommendation and remanded the matter to this Court for further review. See Order dated September 19, 2001, Docket No. 20.

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RICHARD D. SLETTEN, CLERK
JUDGMENT ENTD
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the inmate pays the entire filing fee at the initiation of the proceeding or in installments over a period of time"). The Clerk of Court shall provide notice of this requirement to the prison authorities at FMC-Rochester.

Because IFP status has been granted, Plaintiff is entitled to have the Defendants served by the U.S. Marshal. A summons shall therefore be issued and the U.S. Marshal will be directed to effect service of process on the four named Defendants. However, Marshal service cannot be accomplished at this time, because Plaintiff has failed to submit an adequately supported request for such service. To cure this deficiency, Plaintiff must submit one properly completed Form USM-285 for each Defendant to be served. See Lee v. Armontrout, 991 F.2d 487, 489 (8th Cir.) (per curiam) (it is the pro se plaintiff's "responsibility to provide proper addresses for service on [defendants]"), cert. denied, 510 U.S. 875 (1993). If he does not satisfy this requirement by October 19, 2001, he will be deemed to have abandoned his action, and it will be recommended that the case be dismissed, without prejudice, for lack of prosecution. Fed. R. Civ. P. 41(b). If Plaintiff does satisfy this requirement in a timely manner, then a summons shall be issued, and service of process shall be performed by the U.S. Marshal. However, the Marshal will be required to serve only those Defendants for whom Plaintiff has submitted a properly completed Marshal service form (USM-285). The Clerk will be directed to provide a copy of Form USM-285 to the Plaintiff with this order.

Those Defendants upon whom service of process is effected will be required to file an answer or other responsive pleading, notwithstanding the provisions of 42 U.S.C. § 1997e(g). A copy of this Order shall be served with the summons and Complaint, so that Defendants will be apprised of their obligation to file a responsive pleading.

Based upon the above, and upon all the files, records, and proceedings herein,

IT IS HEREBY ORDERED that:

1. Plaintiff's application to proceed in forma pauperis, [Docket No. 5], is **GRANTED**;

2. Plaintiff shall pay the unpaid balance of the filing fee for this action – namely the full $150 fee required by 28 U.S.C. § 1914(a) -- in the manner prescribed by 28 U.S.C. § 1915(b)(2), and the Clerk of Court shall provide notice of this requirement to prison authorities at the institution where Plaintiff is confined;

3. On or before October 19, 2001, Plaintiff shall file one completed Form USM-285 for each Defendant to be served, failing which it will be recommended that the action be dismissed pursuant to Fed. R. Civ. P. 41(b);

4. The Clerk will provide a copy of Form USM-285 to the Plaintiff with this order;

5. If Plaintiff complies with the requirements of this order in a timely manner, a summons shall be issued and the U.S. Marshal shall effect service of process on those Defendants for whom Plaintiff has submitted a properly completed Marshal service form;

6. A copy of this order shall be served by the Marshal with the summons and complaint; and

7. Those Defendants on whom service of process is effected shall be required to file a response to Plaintiff's complaint.

Dated: September 27, 2001

E. S. Swearingen

E. S. SWEARINGEN
United States Magistrate Judge